

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORA MEADE-ALMODOVAR and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, New York, NY

*Docket No. 98-2013; Submitted on the Record;
Issued April 7, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective April 27, 1997 on the grounds that she was no longer disabled due to her November 18, 1995 employment injury.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation effective April 27, 1997 on the grounds that she was no longer disabled due to her November 18, 1995 employment injury.

On November 30, 1995 appellant, then a 35-year-old regular mailhandler, filed a traumatic injury claim (Form CA-1) alleging that on November 18, 1995, she experienced numbness in the fingers of her right hand extending to her neck while pushing a piece of equipment loaded with small parcels. She stopped work on November 18, 1995.

In a letter dated January 16, 1996, the Office accepted appellant's claim for cervical sprain.

Dr. Chandreshwar N. Sinha, an internist and appellant's treating physician, submitted medical evidence indicating that appellant was totally disabled and unable to return to work.

By letter dated October 3, 1996, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Richard E. Stern, a Board-certified orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Stern of the referral.

Dr. Stern submitted an October 18, 1996 medical report finding that appellant did not have any disability causally related to her November 18, 1995 employment injury and that appellant could work eight hours per day with no physical restrictions.

The Office found a conflict in the medical opinion evidence between Dr. Sinha and Dr. Stern. By letter dated January 27, 1997, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Martin Barschi, a Board-certified orthopedic surgeon, for an impartial medical examination. By letter of the same date, the Office advised Dr. Barschi of the referral.

Dr. Barschi submitted a February 14, 1997 medical report finding that appellant was no longer disabled due to her November 18, 1995 employment injury and that appellant could work eight hours per day with no physical restrictions.

In a notice of proposed termination of compensation dated March 4, 1997, the Office advised appellant that it proposed to terminate her compensation based on Dr. Barschi's medical opinion. The Office also advised appellant to submit additional medical evidence supportive of her continued disability within 30 days.

By decision dated April 9, 1997, the Office terminated appellant's compensation effective April 27, 1997 on the grounds that Dr. Barschi's medical opinion established that appellant was no longer disabled due to her November 18, 1995 employment injury. In a March 12, 1998 letter, appellant, through her counsel, requested reconsideration of the Office's decision.

By decision dated April 25, 1998, the Office denied appellant's request for modification based on a merit review of the claim.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."³ In this case, Dr. Sinha, an internist and appellant's treating physician, opined that appellant continued to be disabled due to her November 18, 1995 employment injury. Dr. Stern, a Board-certified orthopedic surgeon and second opinion physician, opined that appellant was no longer disabled due to her employment injury and that she could work eight hours per day with no physical restrictions. As a conflict arose in the medical opinion evidence between Drs. Sinha and Stern as to whether appellant continued to be totally disabled due to her

¹ *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ 5 U.S.C. § 8123(a).

November 18, 1995 employment injury, the Office properly referred appellant to Dr. Barschi, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

When there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴ In his February 14, 1997 medical report, Dr. Barschi reviewed a history of appellant's November 18, 1995 employment injury, medical treatment and employment. He also indicated his findings on physical examination. Dr. Barschi stated that if appellant's history was correct, the November 18, 1995 employment injury was a competent producing cause of her original injury. He stated:

"[H]owever, the [appellant] at this time presents with purely subjective complaints which were not substantiated by any objective findings both on clinical evaluation or by the records supplied to me. The accepted condition of a cervical sprain has objectively resolved. Any complaints that she is now giving regarding her lower back are not causally related to any accident of November 18, 1995 and is also not substantiated by any objective findings on physical examination. There is no need for any further orthopaedic treatment or physical therapy as she has reached maximum medical benefit from her care. There is no objective reason why [appellant] could not return to her job in the postal department."

In an accompanying work restriction evaluation (Form OWCP-5c) dated February 19, 1997, Dr. Barschi indicated that appellant could work eight hours per day with no physical restrictions.

The Board finds that Dr. Barschi's opinion is rationalized to support a finding that appellant is no longer disabled due to her November 18, 1995 employment injury, and based on a proper factual and medical background. Therefore, his opinion must be accorded special weight on the issue of whether appellant had any continuing disability.

The Office received Dr. Sinha's disability certificates dated February 27 and March 28, 1997 revealing that appellant was hurt at work, and a diagnoses of cervical spine sprain, sprained shoulders and low back pain. Dr. Sinha's disability certificates are insufficient to establish appellant's burden because they failed to discuss whether or how the diagnosed conditions were caused by appellant's November 18, 1995 employment-related injury.⁵

Appellant submitted a September 5, 1997 medical report of Dr. Richard Memoli, an orthopedic surgeon, revealing a history of her November 18, 1995 employment history and medical treatment. Dr. Memoli noted his findings on previous physical and neurological examination of appellant. He diagnosed cervical spine sprain with right radiculopathy. Dr. Memoli opined that based on his clinical findings and evaluation, his findings were causally related to the November 18, 1995 employment injury. He noted appellant's medical treatment

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁵ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

and physical restrictions. Dr. Memoli also concluded that appellant was permanently totally disabled from her job as a postal worker. Appellant also submitted Dr. Sinha's September 9, 1997 medical report providing a history of appellant's employment injury and his findings on physical and objective examination. Regarding his objective findings, Dr. Sinha indicated that magnetic resonance imaging (MRI) scan of the lumbar spine revealed L5-S1 asymmetric right posterior herniated nucleus pulposus resulting in right L5-S1 neural foraminal narrowing. Further, Dr. Sinha indicated that an MRI scan of the cervical spine showed straightening of cervical lordosis and the needle of an electromyogram nerve conduction study was mildly positive showing right lumbar fibromyositis as reported by Dr. Hal S. Gustin.⁶ He diagnosed cervical spine sprain and lumbosacral radiculopathy with a herniated disc. Dr. Sinha stated that appellant's condition was guarded. He opined that based on appellant's prior history, examination, testing and treatment since the time of the injury, her injuries were directly related to the November 18, 1995 employment injury. Drs. Memoli and Sinha's reports are insufficient to establish continued disability because they failed to explain how or why appellant continued to be totally disabled due to the November 18, 1995 employment injury.

Inasmuch as Dr. Barschi's opinion constitutes the weight of the reliable, probative and substantial evidence, the Board finds that the Office properly terminated appellant's compensation benefits effective April 27, 1997 on the grounds that she was no longer disabled due to her November 18, 1995 employment injury.

The April 25, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 7, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ A review of the record failed to disclose the MRI and EMG scan results noted by Dr. Sinha.